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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR   | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/914,040      | 08/22/2001  | Claude Maurice Dreulle |                     | 8639             |

466 7590 03/27/2003

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EXAMINER

KALAFUT, STEPHEN J

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1745

DATE MAILED: 03/27/2003

4

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/914,040

Applicant(s)

DREULLE ET AL.

Examiner

Stephen J. Kalafut

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1745

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 10-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) (none) 6) ☐ Other:

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 10, 11, 15 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Sugaya (Japanese 60-236,454).

Sugaya discloses a box for mounting batteries, which includes opposing side walls (1), and internally projecting shelves (5) which form support elements for rows of batteries. Two end plates (3, 4) are releasably mounted to the side walls. Recitations of intended use, such as “for a vehicle”, do not distinguish. Recitations of how the shelves were put in place (“inserted”) are treated under product-by-process practice, *in re* Fitzgerald 205 USPQ 594, and would not *per se* convey any patentable weight. A copy of the Japanese original document is enclosed.

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Claims 10, 11 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Bannister (US 4,121,718).

Bannister discloses a display rack which includes two opposing walls (10) and projecting shelves (5), some of which project inward between the walls. The shelves are also at an angle inclined from horizontal (column 2, lines 1-3). Recitations of intended use, such as “for a set of electric storage batteries” and “for an electric vehicle” do not distinguish. Recitations of how the shelves were put in place (“inserted”) are treated under product-by-process practice, and would not *per se* convey any patentable weight.

Claims 10 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by either Root (US 3,202,291) or Bell (US 3,439,811).

Root discloses a mounting bracket which includes two opposing walls (14A, 16A), each including inwardly projecting longitudinal folds (18A, 18B, 18C).

Bell discloses a storage rack (10) including identical corrugated sections (12), which may be arranged as opposing walls (figure 1). The inwardly facing corrugations would constitute means for supporting objects, as well as longitudinal folds.

Regarding either Root or Bell, recitations of intended use, such as “for a set of electric storage batteries” and “for an electric vehicle” do not distinguish. Recitations of how the shelves were put in place (“inserted”) are treated under product-by-process practice, and would not *per se* convey any patentable weight.

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Claims 10, 11 and 14-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Vutetakis *et al.* (US 6,162,559).

Vutetakis *et al.* disclose a system (100, 200, 300, 400, 500) for mounting batteries for motive power applications (column 3, lines 18-20), and thus for electric vehicles, which includes opposing walls (104, 204, 304, 404, 504), and internally projecting restraining members (513) which form small shelves, between the opposing walls. The system includes front end plates (150, 250, 350, 450) which may be removably mounted (column 4, lines 56-64), rear end plates (118, 218), and rails (156, 256) or spacers (106) which form battery holding means.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Sugaya or Vutetakis *et al.*, each in view of Beckley (US 5,441,123).

This claim differs from Sugaya and Vutetakis *et al.* by reciting that the end plates include a handling point which may engage a lifting apparatus. Beckley discloses a battery mounting device which includes end plates (22), each with a lifting ear (26). This lifting aid allows the device to be readily moved and placed into position. Forming the lifting ear as part of the end plate "simplifies the assembly and allows optimization of material costs" (column 5, line

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68 through column 6, line 5). For these reasons, it would be obvious to modify the end plates of either Sugaya or Vutetakis *et al.* to each include a lifting ear as shown by Beckley.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Sugaya or Vutetakis *et al.*, each in view of Kouzu *et al.* (US 6,111,387).

This claim differs from Sugaya and Vutetakis *et al.* by reciting a set, i.e., a plurality, of the devices of claim 10, connected electrically. Kouzu *et al.* disclose a battery holding device (10), and a system in which two are connected in series (figure 3 and column 12, lines 42-49). Because this allows a desired voltage to be reached (column 9, lines 20-32), it would be obvious to connect in series, the batteries contained within the mounting devices of either Sugaya or Vutetakis *et al.*, as shown by Kouzu *et al.*

The amendment filed 8/22/01 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The paragraph added by the preliminary amendment, referring to Japanese 60-236,454. This paragraph is not found in applicant's PCT application, nor is the amendment mentioned in the Declaration. The paragraph would thus constitute new matter. Applicant is required to cancel the new matter in the reply to this Office Action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Stone (US 5,403,679 or US 5,981,101) discloses various modular battery racks.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Kalafut whose telephone number is (703) 308-0433.

The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan can be reached on (703) 308-2383. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

sjk  
March 18, 2003

  
STEPHEN KALAFUT  
PRIMARY EXAMINER  
GROUP 1700